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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 RAYMON SELLERS,

12 Plaintiff,

13 v.

14 DERRICK STEVENS dba  
15 STAGECOACH RESTAURANT, et al.,

16 Defendants.  
17

No. 2:20-cv-01787 WBS AC

ORDER

18 Before the court is plaintiff Raymon Sellers' motion for an order requiring non-party  
19 witness Michael Andrews ("Andrews") to show cause why he should not be held in civil  
20 contempt for failing to produce documents which were subpoenaed. ECF No. 37. For the  
21 reasons explained below, the motion is DENIED.

22 BACKGROUND

23 Plaintiff asserts that defendant identified Mr. Andrews as a witness in this case, and that  
24 on November 13, 2021, Andrews was served with a notice of subpoena for documents and  
25 deposition. ECF No. 37 at 2. Andrews appeared for a remote deposition from his home office on  
26 December 3, 2021, but did not produce documents. Id. The parties agreed, due to the lack of  
27 documents and technical difficulties, to continue the deposition until after the documents were  
28 produced. ECF No. 37 at 7. Following the deposition the parties met and conferred on December

1 10, 2021, and January 10, 2022. Id. Nonparty Andrews, specially appearing through counsel,  
2 asserts the request to hold him in civil contempt is improper for several reasons, including that  
3 plaintiff seeks what amounts to expert reports, and that the documents are equally readily  
4 available from defendants. ECF No. 39.

5 DISCUSSION


6 A district court has authority “to punish by fine or imprisonment, or both, at its discretion,  
7 such contempt of its authority, and none other ... (1)[m]isbehavior of any person in its presence or  
8 so near thereto as to obstruct the administration of justice; ... [or] (3)[d]isobedience or resistance  
9 to its lawful writ, process, order, rule, decree, or command.” 18 U.S.C. § 401 (emphasis added).  
10 “[M]isbehavior punishable under section 401(1) must be willful ... and must actually obstruct the  
11 district judge in the performance of his judicial duties.” United States v. Thoreen, 653 F.2d 1332,  
12 1339 (9th Cir. 1981) (citations and internal quotation marks omitted). Additionally, “[o]ne may  
13 be found in contempt for disobeying an order pursuant to section 401(3) only if the order is clear  
14 and definite, and the contemnor has knowledge of it.” Id. (citation and internal quotation marks  
15 omitted).

16 Here, plaintiff has not cited any order of the court that nonparty Andrews has violated, nor  
17 identified behavior amounting to an attempt to obstruct the administration of justice or the disrupt  
18 the performance of judicial duties. Plaintiff did not bring a motion to compel; instead, he asks the  
19 court to consider holding Mr. Andrews in civil contempt. Even assuming the truth of the facts  
20 supplied in plaintiff’s motion and construing every potential ambiguity in favor of plaintiff, Mr.  
21 Andrews’ failure to produce documents would not warrant an immediate leap to civil contempt.  
22 Thus, the undersigned declines to use her discretion to issue an order to show cause regarding  
23 such sanctions.

24 The motion at ECF No. 37 is DENIED.

25 IT IS SO ORDERED.

26 DATED: March 10, 2022

27   
28 ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE